

### **Summary of Issues/Barriers Identified at the EM Small Business Workshop**

As the initial phase in following up on action items from the Environmental Management (EM) Small Business Workshop in Nashville, TN, on July 15-16, 2003, we are posting a summary of issues, suggested changes, and proposed actions for the issues/barriers identified by attendees.

EM and the Office of Procurement and Assistance Management have met to review the barriers and outline a strategy for institutionalizing recommended changes and establishing a framework for moving forward. Currently, we are working with other Departmental elements to discuss the these barriers, explore potential impacts of proposed changes, and determine the most effective approach for incorporating viable changes into existing Departmental processes and procedures.

Future updates on progress to date in implementing proposed changes and development of a comprehensive action plan and will be posted on the website.

<b>Contracting Finance and Bonding Issues - Retainage</b>	
<b>A. Definition/Discussion of Issue</b>	
	Standard government contracting practice, under a cost reimbursement contract, is for the Federal Government to withhold a percentage of every invoice as retainage. The purpose of retainage is to provide an offset for the Government if the final audit determines there are any unallowable costs or overhead rate adjustments requiring the contractor to reimburse the Government.
<b>B. Issues Identified</b>	
	<p>Financing the Retainage</p> <ol style="list-style-type: none"> <li>1. Eats into small business profit</li> <li>2. May cause negative cash flow, depending on size</li> <li>3. Inhibits the contractor's ability to secure bank financing</li> <li>4. Creates a liability on the SB's books that interferes with bonding</li> </ol>
<b>C. Possible Solutions</b>	
	<ol style="list-style-type: none"> <li>1. Cap the withholding/retainage by establishing a fixed dollar amount that would be reasonable for the Government and the contractor and would protect the taxpayer from the potentiality of unallowable cost and the potentiality of variation in overhead rates. The cost should be small enough to prevent negative cash flow or interfere with bank financing.</li> <li>2. Base the retainage on individual tasks rather than the entire contract and release the withholding at the end of the task. As each task is closed, retainage would be minimized.</li> <li>3. Base retainage on annual audit. Ask Defense Contract Audit Agency (DCAA) to perform an annual audit and, annually modify, alter or return retainage that is not needed for unallowable costs or overhead variations. (This would require DCAA to perform an audit, which may be problematic with current DCAA staffing levels.)</li> <li>4. Set a time for close out and follow the Federal Government's quick closeout procedures.</li> <li>5. Government make interest payment on all allowable costs. (This is not a viable option.)</li> </ol>
<b>D. Proposed Actions for Consideration</b>	
	<p>The first four options are all viable. The most viable is to cap the retainage. DOE should be able to determine how much money is needed and establish a cap. The second option is to base retainage on tasks in task order contract; that is also something DOE can do. It is a contract administration issue that will be researched. A methodology for determining the size of the cap will also need to be established. The option to revise withholding annually, based on an audit, is subject to DCAA availability and is outside the control of DOE. The fourth option, to set a time limit for closeout is something that DOE can address. All four of the solutions will be considered in developing an action plan.</p>

<b>Contracting Finance and Bonding Issues – Cash Flow and Billing</b>	
<b>A. Definition/Discussion of Issue</b>	<p>Small Businesses are allowed to invoice every two weeks. The Government makes payment on the 29<sup>th</sup> day. This practice creates problems of cash flow and small businesses experience difficulty in borrowing sufficient amounts to cover their cash flow requirements, especially for large contracts. If a company does not submit a valid invoice, the cycle is much longer than 29 days. The second related issue is the normal business payment cycle.</p>
<b>B. Issues Identified</b>	<ol style="list-style-type: none"> <li>1. Invoicing Delays – the Government holds invoices to reduce the National deficit.</li> <li>2. Invalid Invoicing – Invoicing errors increase the cash flow problems for the small businesses. They must continue cash flow outlays while reconciling the outstanding invoice with the Government.</li> <li>3. Cost of Money interest eats into profits – Interest paid on money borrowed to meet operating expenses reduces profits.</li> <li>4. Interest payment on financing capital costs - If a SB is required, as part of the scope of work, to buy or lease some capital equipment, it requires a large cash outlay. The time for the Government to pay is about 45 days, if everything goes right. If the company has to make a big capital cost payment up front and float the cost for 45 days, the interest cost is difficult to deal with and it eats into profits.</li> <li>5. Start-Up Costs - Most EM contracts are cost reimbursement contracts, so start-up costs require large borrowing and, again, interest, raising the same kind of issues as dealing with capital costs.</li> </ol>
<b>C. Possible Solutions</b>	<ol style="list-style-type: none"> <li>1. <u>Shorten the billing and payment cycle.</u> For example, allow weekly invoicing. Instead of paying and waiting for the 29<sup>th</sup> day, pay on the 10<sup>th</sup> day.</li> <li>2. Use electronic invoice and payment. (DOE's Chief Financial Officer is working on this.)</li> <li>3. <u>Issue a letter of credit equal to the 45 days billing cycle.</u> This is something we can do; the issue is risk to the government. DOE does set up a letter of credit under the M&amp;O contracts. This practice is not something unheard of, but it is a risk to the government. Effectively this is an advance payment to the contractor.</li> <li>4. <u>Benchmark other Agencies/Contractors.</u> As part of its research into this issue, DOE will benchmark other agencies like the Corps of Engineers at Huntsville, and Omaha, and our own contractors at Hanford and the Naval facility command seem to have systems in place for accelerating payment. DOE will examine the practices at these entities and determine if similar systems can be put in place at DOE.</li> <li>5. <u>Provide Seed Money for Mobilization.</u> Provide an advance payment of a block of money to cover mobilization subject to audit at the end of the contract.</li> <li>6. <u>SBA Loan Guarantees.</u> Discuss loan guarantees with the Small Business Administration (SBA).</li> </ol>
<b>D. Proposed Actions for Consideration</b>	

Potential solutions for these issues are within the decision-making power of DOE. We don't have to waive any regulations. We don't have to make any statutory changes, they can be implemented following analyses to see what kind of risks there are to the taxpayer and then make a decision. Some of these things could very well be done. Our goal is to start making these decisions within the next few months and incorporate them into future solicitations.

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EM and the Office of Procurement and Assistance Management have met to review the barriers and outline a strategy for institutionalizing recommended changes and establishing a framework for moving forward. Currently, we are working with other Departmental elements to discuss the identified barriers, explore potential impacts of proposed changes, and determine the most effective approach to incorporating viable changes into existing Departmental processes and procedures.

Future updates on the comprehensive action plan and progress to date in implementing proposed changes will be posted on the website.

## **Contracting Finance and Bonding Issues - Insurance**

### **A. Definition/Discussion of Issue**

Since September 11, 2001, many insurance companies have increased their premiums for general liability insurance premiums making it more difficult for business firms and individuals to get affordable coverage. This makes it especially difficult for small business firms.

### **B. Issues Identified**

1. Difficulties in getting general professional and pollution liability insurance have raised business costs for SB firms.
2. Increased costs for insurance decrease profit margins for small business firms who already have difficulty competing with larger firms.
3. Increased costs increase risks for the SB.

### **C. Possible Solutions**

1. Government to lower its insurance requirements commensurate with the work and the risk.
2. Revise the float on requirements to avoid layering and multiple insurance requirements
3. Have the Government self-insure. That means, the Government takes on the liability. Again this is not unheard of, as a matter of fact, in the large contracts we do that.

### **D. Proposed Actions for Consideration**

All three of these solutions to the problems of small business not being able to get general liability, pollution and professional insurance are within the decision-making power of DOE. We will, we certainly examine the issues closely and determine what can be done.

<b>Contracting Finance and Bonding Issues - Bonding</b>	
<b>A. Definition/Discussion of Issue</b>	
	Bonding is required on fixed price contracts. Banks may require personal collateral from the SB, i.e., their homes. If the bank determines that there is a bonding requirement they will not provide funding because they are not the first lien holder. Bonding is required for fixed price contracts.
<b>B. Issues Identified</b>	
	<ol style="list-style-type: none"> <li>1. Lack of available bonding for small business firms.</li> <li>2. Bonding requirements affect ability of small businesses to obtain bank financing.</li> <li>3. Bonding requirements add dramatically to the price of the project.</li> </ol>
<b>C. Possible Solutions</b>	
	<ol style="list-style-type: none"> <li>1. Don't require bonds. (Check with Corps of Engineers on their program.)</li> <li>2. Structure bonding to decrease as risk decreases, rather than a set bond for the duration of the contract.</li> <li>2. Allow sharing of bonding between teaming partners and subcontractors.</li> <li>3. Have incremental bonding based on severable work units.</li> <li>4. Consider a master (wrap around) bond.</li> <li>5. Develop a consistent bonding policy and stick to it.</li> </ol>
<b>D. Proposed Actions for Consideration</b>	
	EM will examine carefully bonding requirements to establish an EM-wide policy for bonding requirements for EM work. DOE will follow up with the Corps of Engineers to consider their bonding arrangements and take their arrangements into consideration in developing its bonding requirements.

**COST AND COMPLEXITY OF PROCUREMENT PROCESS –  
The Solicitation Process**

**A. Definition/Discussion of Issue**

It is expensive to submit for companies to submit bids to perform EM work. The longer the process takes the more it costs.

**B. Issues Identified**

What can the Government do to allow small businesses to be more efficient in the expenditure of bid and proposal costs and to expedite the process?

**C. Proposed Solutions**

1. Use a phased procurement approach and then have a down select process. (Phased process is more costly and time consuming.)
2. Use a process where firms are allowed to submit something less than a full-blown proposal. Firms would drop out or continue based on the selection criteria for the next phase. This would permit a distribution of bid and proposal costs.
3. Standardize certain proposal information so firms don't have to repeatedly reformat or repeat the same basic information. (This practice is routinely followed with representations and certifications.)
4. Establish a realistic schedule and stick to it.
5. Avoid extending the due date for submitting a proposal within the last 2 weeks before they are due.

**D. Proposed Actions for Consideration**

EM is in the process of investigating these proposed solutions and will include the viable solutions in its Action Plan.



**COST AND COMPLEXITY OF PROCUREMENT PROCESS –  
Request for Proposal (RFP) Structure**

**A. Definition/Discussion of Issue**

Decisions on the structure of the RFP, e.g., page limits, key personnel, oral discussions, etc., have major impacts on proposals. Many decisions seem to be made without a lot of thought or consideration of the consequences, especially the impacts on small business firms.

**B. Issues Identified**

1. **Key Personnel - DOE** practice of specifying the number of key personnel and their required skills and experience may not maximize performance-based contracting.
2. **Page Limitations** – Setting page limits at the sub-element may not permit a company to put their best foot forward and emphasize the critical capabilities of the firm.
3. **Oral Presentations** – Oral presentations are very costly. While DOE tries to limit orals and reduce the time requirements, some field elements still have “marathon” oral presentation sessions for smaller contracts.
4. **Sample Tasks** - The Government widely uses sample tasks. Firms expressed concern about the usefulness and how the tasks are used in the evaluation process.
5. **Site Interface** – The Government needs to take a harder look at interfaces between small business and other contractors at the site to ensure the requirements that should be assigned to other contractors are not included in the small business contract.
6. **Workscope Adjustments** - DOE puts a lot of extra requirements into the work scope that may not be needed.
7. **Section L and M Alignment** - In many cases there is inconsistent use of terms, concepts, and instructions. Workscope requirements and evaluation criteria do not always align properly.
8. **Past Performance** - There are two aspects of this issue: (a) Where a small business is competing head-to-head against a large business, how does the Government level playing field in recognizing small businesses may not have as much experience as a large business. (b) Where experience resides with key personnel on the team in reflecting that in the corporate experience.
9. **Workforce Transition/Restructuring** - Some DOE solicitations require a lot of responsibility for transition to a new work force. This is an expensive area for a small business.
10. **Contract Type/Administration** - New types of contracts require different

approaches to contract administration. EM needs to ensure that everyone is on board with the changing environment.

11. **ID/IQ Bids** – Firms expressed concern relating to the proposed ID/IQ contracts that they would be penalized if they did not submit a bid for a task.
12. **Teaming on ID/IQ Contracts** - Once ID/IQ's are awarded, can contracts team to bid on tasks?
13. **Pre-solicitation Communication** - This issue relates to the need to establish realistic schedules, timing of release of expressions of interest, release of the RFP and the need to have close proximity between these events.
14. **Pre-proposal Communication** – Issue deals with DOE's responsiveness to questions.
15. **Site Tours** – DOE needs to increase the meaningfulness of site tours. The tour should be more than a bus trip around the site. It should provide meaningful interchange, dialog and information for use in preparing a proposal.

## **C. Proposed Solutions**

### **1. Key Personnel**

- a. Consider letting the contractor determine the number of key personnel required for a contract instead of the Government setting the number.
- b. Government will consider designating functional areas and allow the small business to determine the size of the management team, unless there is good cause to do otherwise.

(Approach provides maximum flexibility but may lead to an evaluation weakness, if the Government believes that the bidder didn't understand the requirement or dispersed responsibility to too few key people.)

2. **Page Limitations** - Government will consider setting an overall page limit and let the firms decide how to allocate the number of pages.
3. **Oral Presentations** - EM will: (a) try to limit oral presentations in major procurements to an interview process; (b) weigh the benefits of oral presentations; (c) when orals are used provide information in the RFP about the parameters and the process.
4. **Sample Tasks** – EM will (a) consider making the sample task representative of real work under the contract; (b) do a better job of articulating how the sample task will be evaluated.
5. **Site Interface** - EM will analyze interface requirements to make ensure

interfaces required between contractors are optimized for small business firms.

- 6. Adjust Workscope for Small Business Entities** - DOE will conduct a quality control review to ensure that work packages are appropriately developed.
- 7. Alignment Between Sections L&M** - Despite best efforts there may be areas of disagreement between these two sections of the RFP. We will consider establishing a Red Team concept to improve the quality of our solicitations.
- 8. Past Performance** - DOE will examine ways to merge the two areas of experience in a way that the SB can demonstrate in their proposals that they are qualified to do the work. We will review evaluation criteria to see if there are ways of accomplishing this.
- 9. Workforce Restructuring/Transitioning** – DOE will look at the issue and determine the best approach when we structure our RFP's to make sure the requirements foster competition in the small business area.
- 10. Contract Type/Administration** - DOE will consider the need for additional training in this area.
- 11. Declining to Bid on ID/IQ Tasks** - We will consider this for future tasks. If there is a legitimate reason not to bid, contractor should not be penalized.
- 12. Teaming on ID/IQ Contracts**- We will examine this issue.
- 13. Pre-Solicitation Communication** - One suggestion was to post acquisition plans. We will look at providing more information to help small businesses understand what we are looking for in terms of contract performance.
- 14. Pre-proposal Communication** – In most cases DOE posts the responses to questions real time. No action appears to be needed.
- 15. Site Tours** – DOE will examine ways to make site tours more meaningful.

#### **D. Proposed Actions for Consideration**

EM is in the process of investigating these issues and proposed solutions. Those options that can be adopted will be included in the EM Action Plan.

<b>Affiliation Requirements/Size Standards – Fee Sharing</b>	
<b>A. Definition/Discussion of Issue</b>	<p>For most large contracts DOE requires the team members and subcontractors to share a single fee pool to avoid a fee on fee situation. The allocation of the pool is negotiated among the team members. The requirement to share the fee pool may jeopardize a firm's small business status if they are sharing the fee pool with a large business based on the Small Business Administration's affiliation rule.</p>
<b>B. Issues Identified</b>	<p>The DOE requirement for sharing a common fee pool may impact a firm's ability to form relationships to bid on EM small business contracts.</p>
<b>C. Possible Solutions</b>	<ol style="list-style-type: none"><li>1. Review the single fee requirement to determine whether it should be required for small business set-aside contracts.</li><li>2. In negotiating the fee pool, ensure that the small business firm receives a minimum of 51 percent of the fee pool.</li></ol>
<b>D. Proposed Actions for Consideration</b>	<p>EM will discuss the issue with the Small Business Administration to determine whether the DOE requirement for a single fee pool causes an affiliation problem. If this practice does present an affiliation problem, DOE will re-examine the requirement.</p>

<b>Affiliation Requirements/Size Standards – Lack of Knowledge/Consistency in Application of Small Business Regulations</b>	
<b>A. Definition/Discussion of Issue</b>	
	<p>There seems to be no consistency in interpretation of the small business rules across DOE offices. Many Federal staff contacted by the small business firms do not have a good grasp of the rules and regulations. In addition, SBA regions seem to have different interpretations depending on the location.</p>
<b>B. Issues Identified</b>	
	<p>Small business firms are concerned about differing interpretations across the DOE complex and SBA Regions and the lack of knowledge of DOE Federal employees concerning small business rules and regulations</p>
<b>C. Possible Solutions</b>	
	<ol style="list-style-type: none"> <li>1. Improve training of small business program staff.</li> <li>2. Establish guidelines that can be followed consistently across DOE.</li> <li>3. Work with SBA to improve consistency in interpretation of rules and regulations.</li> </ol>
<b>D. Proposed Actions for Consideration</b>	
	<p>DOE will use its existing in-reach program to train small business program managers and make them aware of the concerns of the small business community regarding inconsistencies in interpretation and lack of knowledge about small business requirements. DOE will also discuss this issue with SBA.</p>

<b>Affiliation Requirements/Size Standards – 8(a) Mentor Protege</b>
<b>A. Definition/Discussion of Issue</b>
<p>The Office of Small and Disadvantaged Business Utilization distributed a one page summary of an agreement that has been negotiated with SBA concerning the 8(a) mentor-protégé program. Under the agreement with SBA an 8(a) firm may team with its mentor and share the fee pool and still be considered a small business. Under the narrowly defined program negotiated with SBA, “significant” business is interpreted as 25 percent of the work. SBA still requires that the project manager be a person from the 8(a) firm.</p>
<b>B. Issues Identified</b>
<p>Small business firms expressed concerns about potential competitions between 8(a) mentor protégé firms and other small businesses who may not be exempt from the affiliation requirements.</p>
<b>C. Possible Solutions</b>
<p>Structure Requests for Proposals to ensure a level playing field for all offerors.</p>
<b>D. Proposed Actions for Consideration</b>
<p>DOE will review the agreement with SBA in detail and determine the appropriate application of the agreement.</p>

